

State Office of Administrative Hearings



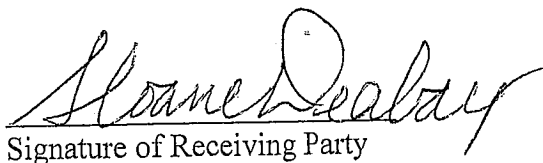
Cathleen Parsley
Chief Administrative Law Judge

TO: **DOCKET CLERK
OFFICE OF CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TX 78711-3087**

RE: **SOAH Docket No. 582-08-1318; TCEQ Docket No. 2007-1956-UCR;
Application of Mustang Special Utility District to amend Sewer Certificate of
Convenience and Necessity No. 20930 in Denton County, Texas**

On _____, the following items were delivered to the Chief Clerk's Office.

Your signature below acknowledges receipt of the above referenced documents from the State Office of Administrative Hearings.


Signature of Receiving Party

Date

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COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 DEC 14 PM 3:57
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HSS/pp

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 14, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 DEC 14 PM 4: 22
CHIEF CLERKS OFFICE

Re: **SOAH Docket No. 582-08-1318; TCEQ Docket No. 2007-1956-UCR;
Application of Mustang Special Utility District to amend Sewer Certificate of
Convenience and Necessity No. 20930 in Denton County, Texas**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than January 4, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than January 14, 2010.

This matter has been designated **TCEQ Docket No. 2007-1956-UCR; SOAH Docket No. 582-08-1318**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Seitzman".

Howard S. Seitzman
Administrative Law Judge

HSS/pp
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: MUSTANG SPECIAL UTILITY DISTRICT

SOAH DOCKET NUMBER: 582-08-1318

REFERRING AGENCY CASE: 2007-1956-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ HOWARD S. SEITZMAN**

REPRESENTATIVE / ADDRESS

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MUSTANG SUD

TEXAS
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2009 DEC 14 PM 4:22
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-1318
TCEQ DOCKET NO. 2007-1956-UCR

2009 DEC 14 PM 4: 22

APPLICATION OF MUSTANG SPECIAL § BEFORE THE CHIEF OF THE STAFF OFFICE
UTILITY DISTRICT TO AMEND SEWER §
CERTIFICATE OF CONVENIENCE AND § OF
NECESSITY NO. 20930 IN DENTON §
COUNTY TEXAS; §
TCEQ APPLICATION NO. 35709-C § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

Mustang Special Utility District (Mustang or Applicant) filed an application pursuant to Chapter 13 of TEX. WATER CODE ANN. (Water Code), seeking an amendment of its Certificate of Convenience and Necessity (CCN) to provide sewer utility service in Denton County (Application). Specifically, Mustang proposes to provide retail sewer service to approximately 2,423.08 acres of land (Proposed Service Area) located in the eastern portion of Denton County, near the Collin County line. Applicant has service requests from Land Advisors, Ltd., and Smiley Road, Ltd., for approximately 1,018.79 acres of land within the Proposed Service Area. No one contests granting Mustang a CCN for the area for which service has been requested (Uncontested Service Area). Thus, the ultimate issue in dispute in this proceeding is whether Mustang's retail sewer CCN should be amended to include the 1400-acre portion of the Proposed Service Area for which no request for service has been received (Contested Service Area).

The hearing on the merits focused on the Contested Service Area. The stipulations regarding the Uncontested Service Area are set forth in the Proposed Order.¹

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) recommended the CCN be denied for the Contested Service Area. The

¹ In the parties' stipulations, the Proposed Service Area is referred to as the "requested area."

lone Protestant, Aqua Development, Inc., dba Aqua Texas, Inc. (Aqua Texas), also opposed the CCN for the Contested Service Area.

The Administrative Law Judge (ALJ) recommends that the Commission approve the Application for retail sewer service for the entire Proposed Service Area, including the Contested Service Area.

II. BACKGROUND AND PROCEDURAL HISTORY

In June 2007, Mustang filed an application to decertify a portion of Aqua Texas' sewer CCN No. 20867 and to amend Mustang's sewer CCN No. 20930 in Denton County.² Mustang proposed adding a total of 2,551.09 acres to its sewer CCN.³ Mustang provided mailed notice of the application to landowners, neighboring utilities, and affected parties and published notice of the application in the *Denton Record Chronicle*. The TCEQ received opt out requests for the Proposed Service Area from Affordable Housing Communities and from Celina West 637, Ltd.⁴ The TCEQ also received protests to the application from the City of Celina (Celina) and Aqua Texas.⁵

The Chief Clerk of the TCEQ mailed notice of the preliminary hearing on April 8, 2008.⁶ Mustang amended its application on May 16, 2008, by removing Affordable Housing Communities' property from the requested area. This amendment also removed Aqua Texas' CCN No. 20867 from the area.⁷ This amendment decreased the size of the Proposed Service Area to 2,423.08 acres.⁸

² Ex. Mustang-1 at 6:10.

³ Ex. ED-6 at 4:9-10.

⁴ Ex. ED-6 at 4:13-14, 5:3; *see also* 30 TEX. ADMIN. CODE § 291.102(h) (West 2009) (describing the opt out process).

⁵ Ex. ED-5 at 3:22-23.

⁶ Ex. ED-4.

⁷ Ex. ED-6 at 4:12-15.

⁸ Ex. ED-6 at 4:16-18.

Mustang, the ED, the Office of Public Interest Counsel, and Aqua Texas were named as parties at a preliminary hearing held on May 20, 2008.⁹ On July 2, 2008, Mustang entered into a settlement agreement with Celina West 637 and Celina, resulting in Celina West withdrawing its opt out request and Celina withdrawing its protest.¹⁰

Following a March 10, 2009 preliminary hearing, the March 17, 2009 hearing on the merits was continued to allow the parties to complete their settlement negotiations.¹¹ A May 21, 2009 notice from the parties stated that issues remained unresolved, and the hearing on the merits was set for August 5 and 6, 2009.¹²

ALJ Howard S. Seitzman convened an evidentiary hearing on August 5, 2009.¹³ At the hearing on the merits, the ED was represented by Stefanie Skogen, Mustang was represented by Skip Newsom and James W. Wilson, and Aqua Texas was represented by Mark H. Zeppa. Following the evidentiary hearing, the parties entered into a stipulation in which they agreed that Mustang's application should be granted for the Uncontested Service Area. The record closed on October 16, 2009, following the filing of briefs.

III. JURISDICTION

The parties did not dispute TCEQ's jurisdiction, SOAH's jurisdiction, or the adequacy of notice. The TCEQ and SOAH have jurisdiction over this matter and notice was proper as reflected by the Findings of Fact and Conclusions of Law in the attached Proposed Order.

⁹ Order No. 2 (May 22, 2008).

¹⁰ Ex. ED-6 at 5:7-10, Att. B; Order No. 3 (Aug. 4, 2008).

¹¹ Order No. 6 (March 13, 2009).

¹² Order No. 7 (June 9, 2009).

¹³ Transcript of Hearing 3 (Aug. 5, 2009).

IV. BACKGROUND

Mustang began in 1966 as a member owned and operated non-profit water supply corporation. It provided potable water from groundwater wells to approximately 50 families. In 2002, the Mustang Water Supply Corporation converted to a non-taxing special utility district (SUD). It also began providing retail sewer service. As of the date of the hearing, Mustang provides retail and contract water utility service to approximately 7,900 customers and retail and contract sewer utility service to approximately 5,300 customers. Mustang's service area comprises approximately 125 square miles in northeast Denton County. As a SUD, Mustang is a voting member of the Upper Trinity Regional Water District (UTRWD), and Mustang's General Manager, Christian K. Boyd, serves on the Board of Directors of UTRWD.

UTRWD provides wholesale water and wastewater services to its members and to contract customers in Denton County and portions of Collin and Dallas counties. UTRWD is a legislatively created conservation and reclamation district designed to meet the regional wholesale water supply and wastewater needs of Denton County and adjacent areas.

Mustang proposes to meet the expanding wastewater needs in the in the Doe Branch Basin of Denton County via its Application. Mustang will rely upon gravity flow for the collection and transmission of sewage and will use regional interceptor and treatment facilities. If granted a CCN to serve the Proposed Service Area, all of the Doe Branch Basin, with the exception of the Affordable Housing Community's 128-acre Prosper Point subdivision, will be served by the regional system. The Prosper Point subdivision is within the Aqua Texas CCN and will be serviced by a 0.225 million gallons per day (mgd) waste water treatment plant.

The Doe Branch Interceptor runs at the edge of the Proposed Service Area and is sized to handle projected sewage flows for the Doe Branch Basin over the next 20 years. The Doe Branch Interceptor connects to the Doe Branch Lift Station, which pumps wastewater to UTRWD's Riverbend Water Reclamation Plant. The Riverbend Water Reclamation Plant is

permitted for 3.0 mgd with an option to expand to 7.0 mgd. The Doe Branch Water Reclamation Plant, permitted for 5.225 mgd, will eventually replace the Doe Branch Lift Station. Mustang has subscribed contractual capacity available in both the Riverbend and the Doe Branch plants and can increase its subscriptions. Both plants have unallocated capacity.

V. APPLICABLE STANDARDS AND CONSIDERATIONS

Title 30, subchapter G of the Texas Administrative Code (TAC) sets forth the Commission's rules regarding CCNs. Sections 291.101 through 291.107 are the primary provisions that apply to CCN applications, addressing when a Retail Public Utility (RPU) must have a CCN and detailing the process through which an RPU can obtain or amend a CCN. Under Water Code § 13.246(b), the Commission may grant an application to amend a CCN only if it finds that the action is "necessary for the service, accommodation, convenience, or safety of the public." Water Code § 13.246(c) sets out the criteria that the Commission must consider. The same criteria are also enumerated in the TCEQ rules at 30 TAC § 291.102(d). Those criteria are:

- the adequacy of service currently provided to the requested area;
- the need for additional service in the requested area;
- the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- the ability of the applicant to provide adequate service;
- the feasibility of obtaining service from an adjacent retail public utility;
- the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- environmental integrity; and
- the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.

VI. ISSUES IN DISPUTE

With respect to the Contested Service Area, the parties primarily disputed (1) the need for additional service, (2) the effect on area landowners and RPUs serving the proximate area, and (3) the feasibility of obtaining service from an adjacent RPU.

VII. ADEQUACY OF CURRENT SERVICE

No RPU provides service to the Contested Service Area. The area is currently composed of farmland and a mobile home park. Residents utilize on-site sewer facilities (OSSFs).¹⁴ Single family residences served by an OSSF must have a lot size of no less than one acre.

VIII. NEED FOR ADDITIONAL SERVICE

Both the ED and Aqua Texas contend Mustang failed to prove a need for additional service beyond the existing OSSFs. Both parties point to the lack of a request for service within the Contested Service Area. The ED's position turns, in part, on its contention that Mustang failed to present population growth estimates or development plans for the Contested Service Area. In the absence of a request for service or evidence that the area's growth and development will warrant additional service, the ED and Aqua Texas see no need for additional service.

All parties agree that the Uncontested Service Area composes approximately 42% of the Proposed Service Area. The Contested Service Area lies primarily to the west and southwest of the Uncontested Service Area. The southwest corner of the Contested Service Area is adjacent to some 128 acres certificated to Aqua Texas. The balance, and vast majority, of the Contested Service Area is adjacent to land certificated to Mustang. Two small noncontiguous tracts are located along the eastern corners of the Uncontested Service Area, just west of the Denton County/Collin County line. These two small tracts are bordered on their east by land, located

¹⁴ Also known as septic systems.

just east of the Denton County/Collin County line, certificated for wastewater to the City of Celina.

All of the Proposed Service Area is located in an area to the east of FM 1385, to the south FM 428, to the west of Legacy Road and to the north of Parvin Road. The service roads for the North Dallas Tollway, which will run to the east of the Proposed Service Area, are in place. The toll road will provide major north-south access to this portion of the Denton County/Collin County area while US Highway 380 is the east-west arterial.¹⁵ As detailed in Mustang's Wastewater Master Plan (WMP),¹⁶ the general area has experienced dynamic growth. With the expansion of the transportation infrastructure, it is reasonable to expect continued growth throughout the general area.

Although an applicant may demonstrate need through various means, including a growth study or evidence of a planned development,¹⁷ the ED contends Mustang failed to prove that the WMP projections apply to the Contested Service Area. The Mustang WMP does not include population projection information specific to the Contested Service Area. It does provide information for the general area, including the contiguous land to the north, south, and west.¹⁸ The maps and photographs in evidence show no discernible differences between the Contested Service Area and the Uncontested Service Area. No manmade or natural barriers are evident. The Contested Service Area is not significantly different than its three surrounding sides.¹⁹ The underlying documents and studies from which the WMP is derived encompass the entire area, including the Contested Service Area. The general area, including the Contested Service Area, is projected to continue its development.²⁰ ED witness Brian Dickey acknowledged he knew of no

¹⁵ US Highway 380 lies to the south of the Proposed Service Area.

¹⁶ Mustang updated and refined existing population and development studies to develop its WMP. The Mustang WMP serves as the wastewater planning document for the entirety of the area currently certificated to Mustang.

¹⁷ 30 TAC § 291.102(d)(2)(E).

¹⁸ The WMP stopped at the Denton County line and did not specifically address land to the east in Collin County.

¹⁹ Tr. at p. 26.

²⁰ Mustang Ex. 4, p. 2.

reason why the type of development projected in the WMP for the surrounding area would not also occur in the Proposed Service Area, including the Contested Service Area.²¹ Assuming the economy continues its recovery, significant development is expected along the US Highway 380 and FM 1385 corridor during the next five years.²²

Denser residential and commercial development is proposed for land adjacent to the Contested Service Area. The denser residential and commercial development of the 1,018-acre Land Advisors and Smiley Road tracts increases the likelihood that similar development will occur in the Contested Service Area.

Land Advisors, Smiley Road and another developer, Tomlin Investments, Ltd. (Tomlin Investments), share common ownership, with Land Advisors as the parent company. The Land Advisors development will contain approximately 950.65 acres within the Uncontested Service Area and will require Mustang to provide adequate retail water and sewer service to 2,865 single family homes, 23 acres of multi-family use, and 163 acres of commercial/retail use. The Smiley Road development is located partly within the Uncontested Service Area; the remainder is located in Mustang's existing sewer CCN. The Smiley Road development will be primarily residential with a density of 3.75 single-family units per acre. Tomlin Investments has requested water and sewer service from Mustang for an adjacent development located south of the Land Advisors and Smiley Road developments. The Tomlin Investments development encompasses 101.87 acres located entirely within Mustang's existing sewer CCN. The Tomlin Investments development will be residential with a density of 3.75 single-family units per acre and may include some local community retail. It is reasonable to expect similar development in the Contested Service Area.

The wastewater demands of the new developments cannot be met by OSSFs. Retail sewer service will be needed to service the demands of the new developments. The ALJ

²¹ Tr. at 182.

²² Tr. at p. 94.

concludes that Mustang has proven by a preponderance of the credible evidence in the record that a need for additional service exists.

IX. IMPACT ON THE APPLICANT AND OTHER UTILITIES IN THE AREA

Granting Mustang a sewer CCN for the Contested Service Area precludes other utilities, absent additional action, from providing sewer service to the certificated area. The City of Celina supports Mustang's Application for sewer service to the Proposed Service Area. For reasons discussed in Section XI, granting a sewer CCN to Mustang to serve the Contested Service Area will not impact Aqua Texas. Current OSSF users will not be affected as they must elect to switch to sewer service.

X. APPLICANT'S ABILITY AND CAPABILITY OF PROVIDING ADEQUATE SERVICE

Mustang's ability to providing adequate service to the Proposed Service Area is not in dispute and is addressed in the Proposed Order.

XI. FEASIBILITY OF OBTAINING SERVICE FROM AN ADJACENT UTILITY

As previously mentioned, the City of Celina does not desire to serve the Proposed Service Area and supports Mustang's Application for sewer service to the Proposed Service Area. Aqua Texas has a CCN to provide sewer service to the 128-acre Prosper Point Development.²³ Aqua Texas has an agreement with Prosper Point Development to serve 578 sewer connections.²⁴ No development has occurred on the 128-acre tract, and Aqua Texas has not yet constructed the package wastewater treatment plant that would be needed to serve that tract. The discharge permit for the planned plant has a maximum allowed capacity of 0.225

²³ ATI Ex. 2, p. 6.

²⁴ Tr. at p. 163.

mgd²⁵ and is sized to meet the only the demands of the Prosper Point Development.²⁶ As currently permitted, the Aqua Texas plant could not serve dense development in the 1,400-acre Contested Service Area; it could only serve a density of one unit per two acres.²⁷

XII. FINANCIAL ABILITY OF THE APPLICANT

Mustang's financial ability and financial resources are not in dispute and are addressed in the Proposed order.

XIII. IMPACT ON ENVIRONMENTAL INTEGRITY

While there will be some temporary disturbance of the environment due to construction, a central sewer system may be more environmentally friendly than OSSFs, the only other alternative in this area. A central sewer system will allow denser development than is allowed with an OSSF. Additionally, certain types of development may occur that would not be feasible with an OSSF.

Given the development expected in the near future, certificating the Contested Service Area to Mustang without waiting for a request for service minimizes impact on the environment by allowing proper planning within the drainage basin. Proper planning includes using gravity flow when possible to avoid the need for lift stations, allowing the correct oversizing of lines to accommodate later growth, and setting aside needed utility corridors in the correct locations.²⁸ Mechanical systems are subject to failure. Allowing proper planning can reduce the need for mechanical systems by using gravity flow and help protect the environment from mechanical upsets. Installing lines sized to handle anticipated growth avoids the unnecessary disturbance of soils at a subsequent date to replace undersized lines.

²⁵ ATI Ex. 2, p. 36.

²⁶ Tr. at p. 166.

²⁷ Tr. at pp. 165-166.

²⁸ Tr. at p. 100.

The benefits of the new wastewater system outweigh the temporary disturbance of the environment. The ALJ finds that approving the Application would have no significant detrimental effect upon environmental integrity and could improve the environment in the Proposed Service Area compared to more piecemeal planning.

XIV. IMPROVEMENT IN SERVICE OR LOWERING OF CUSTOMER COSTS

For consumers choosing to stay with their OSSF, the Application does not affect their cost or service. For consumers who will be tied to Mustang's centralized sewer system, the difference in cost can not be measured directly because no other RPU serves or proposes to serve the Proposed Service Area. Aqua Texas does not have a pending application for the contested Service Area. However, based upon a comparison with Aqua Texas' rates within the North Region service areas, Mustang's rates for sewer service are below those of Aqua Texas.

XV. SUMMARY UNDER APPLICABLE STANDARDS AND CONSIDERATIONS

The ALJ concludes that Mustang possesses all of the capabilities to provide continuous and adequate service to the Proposed Service Area, including the Contested Service Area, as required by Water Code § 13.241(a), (b), and (c). Granting the Application is necessary for the public's service, accommodation, and convenience.

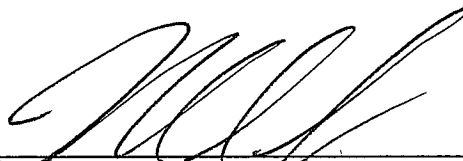
XVI. REGIONALIZATION

The use and extension of existing sewer and wastewater treatment infrastructure to serve the Proposed Service Area, including the Contested Service Area, is consistent with the goal of using regional facilities.

XVII. CONCLUSION

After a review of the record and for the reasons given above, the ALJ recommends that the Commission adopt the attached Proposed Order approving the Mustang's certificate of convenience and necessity for the Proposed Service Area, including the Contested Service Area.

SIGNED December 14, 2009.



**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER GRANTING THE APPLICATION BY THE MUSTANG SPECIAL
UTILITY DISTRICT (SUD) TO AMEND SEWER CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 20930 IN DENTON COUNTY;
TCEQ DOCKET NO. 2007-1956-UCR; SOAH DOCKET NO. 582-08-1318**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered Mustang SUD's application to amend sewer CCN No. 20930 in Denton County, Texas, Application No. 35709-C.

Howard S. Seitzman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted preliminary hearings on May 20, 2008, and March 10, 2009, and a hearing on the merits of the application on August 5, 2009. Stefanie Skogen appeared for the Executive Director (ED) of the TCEQ, Skip Newsom appeared for Mustang SUD (Mustang), and Mark Zeppa appeared for Aqua Development, Inc., dba Aqua Texas, Inc. (Aqua Texas). All of the foregoing, together with the Office of Public Interest Counsel (OPIC), are parties to this docket.

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Background

1. Mustang is a retail public utility (RPU) as defined by 30 TEX. ADMIN. CODE (TAC) § 291.3(4).

2. On or about June 4, 2007, Mustang applied to the TCEQ to decertify a portion of Aqua Texas' sewer CCN No. 20867 and to amend sewer CCN No. 20930 in Denton County, Texas (Application).
3. On or about September 28, 2007, Affordable Housing Communities filed a request to opt-out.
4. Affordable Housing Communities owns a 128-acre tract in the southwest corner of the Proposed Service Area.
5. The undeveloped 128-acre tract, known as the Prosper Point subdivision, is certificated to Aqua Texas for sewer service under CCN No. 20867.
6. The TCEQ also received an "opt-out" request from Celina West 637, Ltd (Celina West).
7. The TCEQ received protests to the Application from the City of Celina and Aqua Texas.
8. Mustang currently provides wastewater services under CCN No. 20930 and provides retail water service under CCN No. 11856.
9. Mustang SUD amended its Application on or about May 16, 2008, and removed Prosper Point and Aqua Texas' sewer CCN No. 20867 from the requested area.
10. On July 2, 2008, Mustang SUD entered into a settlement agreement with Celina West and the City of Celina, resulting in Celina West withdrawing its opt out request and the City of Celina withdrawing its protest.
11. By its amended Application, Mustang requests retail sewer certification for approximately 2,423.08 acres (Proposed Service Area).
12. The Proposed Service Area is located approximately 5.5 miles southeast of downtown Aubrey, Texas, and generally bounded on the north by FM 428 W., on the east by County Line Road, and on the south by Crutchfield Road, and on the west by FM 1385.

13. The Proposed Service Area is bounded on the north, south, and west sides by Mustang's current water and sewer CCNs. The Proposed Service Area is bounded on the east by the City of Celina's sewer CCN No. 20764.
14. On or about February 5, 2009, Celina filed notice with the Commission that it supports Mustang's amended Application.

Jurisdiction

15. Mustang mailed notice of the Application on August 30, 2007, to landowners, neighboring utilities, and affected parties.
16. Mustang published notice of the Application in the *Denton Record Chronicle* on September 4, 2007, and September 11, 2007.
17. The *Denton Record Chronicle* is a newspaper regularly published and circulated in Denton County.
18. The Chief Clerk of the TCEQ mailed notice of the preliminary hearing on April 8, 2008.
19. A preliminary hearing was held on May 20, 2008, at which time Mustang, the ED, OPIC, and Aqua Texas were named as parties. An additional preliminary hearing convened on March 10, 2009.
20. An evidentiary hearing convened and concluded on August 5, 2009.

Stipulations of Fact

21. Following the August 5, 2009, evidentiary hearing, the ED, Mustang, and Aqua Texas agreed on stipulations of fact.
22. The stipulations of fact address the portion of the Proposed Service Area that is not contested by any party (Uncontested Service Area).
23. The ED, Mustang and Aqua Texas stipulated to the following facts:

- a. Mustang SUD's sewer CCN application, as amended, requests retail sewer certification to approximately 2,423.08 acres of land in this docket.
- b. Mustang SUD has received requests for retail sewer service from Land Advisors, Ltd. (Land Advisors) and Smiley Road Ltd. (Smiley Road) for the development of their properties within and adjacent to the requested area.
- c. The Smiley Road and Land Advisors properties within the requested area comprise approximately 1,018.79 acres of land, or approximately forty-two percent (42.05%) of the land area requested for certification by Mustang SUD's application.
- d. There is no service currently provided to the proposed Smiley Road and Land Advisors developments within the requested area.
- e. The proposed density of the Land Advisors and Smiley Road developments is such that individual on-site sewage facilities (OSSFs) cannot be utilized for wastewater treatment and disposal, resulting in the need for the requested service to the area represented by these developments.
- f. Mustang SUD has the fiscal, technical, and managerial ability to serve the areas requested by the Land Advisors and Smiley Road developers.
- g. The CCN amendment requested by Mustang SUD for the area represented by the Land Advisors and Smiley Road developments, if granted, will increase the defined area that Mustang SUD is obligated to serve with continuous and adequate service and reduce the capability of other retail sewer service providers to extend service to such area.
- h. The environmental integrity of the area represented by the Land Advisors and Smiley Road developments will be temporarily disturbed during the construction of the

sewer facilities to serve such developments, but such temporary disturbance will occur with any similar developments.

- i. The granting of the CCN amendment requested by Mustang SUD for the area represented by the Land Advisors and Smiley Road developments will result in an improvement in sewer service to the area, as there is presently no retail sewer service available to such area and service has been requested for those two developments.
- j. The parties have agreed that Mustang SUD's application should be granted for the area for which it has received requests for service from Land Advisors and Smiley Road.

24. The only portion of the Proposed Service Area still in dispute (Contested Service Area) is the area not covered by the Land Advisors and Smiley Road requests for service.

Adequacy of Service

25. No entity is certificated to provide retail sewer service to the Proposed Service Area and no sewer service is currently provided to the Proposed Service Area.
26. The Contested Service Area is currently composed of farmland and a mobile home park.
27. Residents use on-site sewer facilities (OSSFs), also known as septic systems.
28. Single family residences served by an OSSF must have a lot size of no less than one acre.
29. OSSFs will not support denser residential development.
30. OSSFs will not support commercial development.

Need for Additional Service

31. The Contested Service Area lies primarily to the west and southwest of the Uncontested Service Area.

32. The southwest corner of the Contested Service Area is adjacent to the 128 acres certificated to Aqua Texas. The balance, and vast majority, of the Contested Service Area is adjacent to land certificated to Mustang.
33. Two small noncontiguous tracts are located along the eastern corners of the Uncontested Service Area, just west of the Denton County/Collin County line. These two small tracts are bordered on their east by land, located just east of the Denton County/Collin County line, certificated for wastewater to the City of Celina.
34. All of the Proposed Service Area is located in an area to the east of FM 1385, to the south FM 428, to the west of Legacy Road and to the north of Parvin Road.
35. The extension of the Dallas North Tollway will run to the east of the Proposed Service Area.
36. The service roads for the Dallas North Tollway extension are in place.
37. The Dallas North Tollway extension will provide major north-south access to this portion of the Denton County/Collin County area while US Highway 380, which lies to the south of the Proposed Service Area, is the major east-west arterial.
38. With the expansion of the transportation infrastructure, it is reasonable to expect continued growth throughout the area.
39. Land use and demographic projections for the area bordering the Proposed Service Area forecast a transition from low density agricultural use to higher density residential and commercial use.
40. The general area has experienced dynamic growth.
41. Demand in Mustang's certificated area has increased significantly.
42. Mustang has been setting up 130 to 140 meters per month.

43. The Contested Service Area and the Uncontested Service Area are very similar, with no manmade or natural barriers.
44. During the next five years, significant development is expected along the US Highway 380 and FM 1385 corridor.
45. Denser residential and commercial development is occurring near the Contested Service Area.
46. Denser residential and commercial development is proposed for land adjacent to the Contested Service Area.
47. The denser residential and commercial development of the 1,018-acre Land Advisors and Smiley Road tracts increases the likelihood that similar development will occur in the Contested Service Area.
48. Land Advisors, Smiley Road and another developer, Tomlin Investments, Ltd. (Tomlin Investments), share common ownership, with Land Advisors as the parent company.
49. The Land Advisors development will contain approximately 950.65 acres within the Uncontested Service Area, and will require Mustang to provide adequate retail water and sewer service to 2,865 single family homes, 23 acres of multi-family use, and 163 acres of commercial/retail use.
50. The Smiley Road development is located partly within the Uncontested Service Area; the remainder is located in Mustang's existing sewer CCN.
51. The Smiley Road development will be primarily residential with a density of 3.75 single-family units per acre.
52. Tomlin Investments has requested water and sewer service from Mustang for an adjacent development located south of the Land Advisors and Smiley Road developments.

- 53. The Tomlin Investments development encompasses 101.87 acres located entirely within Mustang's existing sewer CCN.
- 54. The Tomlin Investments development will be residential with a density of 3.75 single-family units per acre and may include some local community retail.
- 55. It is reasonable to expect similar development in the Contested Service Area.
- 56. The wastewater demands of the new developments cannot be met by OSSFs.
- 57. Retail sewer service will be needed to service the demands of the new developments.

Effect of Granting Certificate on Applicant and Other Utilities

- 58. The City of Celina supports the Application.
- 59. The undeveloped 128-acre Prosper Point subdivision tract is adjacent to the southwest corner of the Contested Service Area and is certificated for sewer service to Aqua Texas.
- 60. Aqua Texas has not yet constructed a wastewater treatment plant to serve the Prosper Point subdivision.
- 61. Aqua Texas' permit for the Prosper Point subdivision is not sufficient to serve the development reasonably anticipated for the Contested Service Area.
- 62. The discharge permit for the planned Aqua Texas plant is sized to meet only the demands of the Prosper Point Development.
- 63. Aqua Texas has no guaranteed wastewater treatment capacity from UTRWD, or any other entity, with which it can serve the Contested Service Area.
- 64. Mustang is a participating member of the Upper Trinity Regional Water District's (UTRWD) regional water supply and wastewater systems.

65. The Proposed Service Area is located within the Doe Creek Branch Drainage Basin in Denton County, Texas, which is included in UTRWD's Northeastern Regional Water Reclamation System.
66. Mustang will rely upon gravity flow for the collection and transmission of sewage and will use regional interceptor and treatment facilities.
67. With the certification of the Proposed Service Area to Mustang, all of the Doe Branch Basin, with the exception of the Affordable Housing Community's 128-acre Prosper Point subdivision, will be served by the regional system.
68. The Prosper Point subdivision is within the Aqua Texas CCN and will be serviced by a 0.225 million gallons per day (mgd) waste water treatment plant.
69. Mustang will provide sewer service to the Proposed Service Area through an extension of local and regional wastewater collection and treatment facilities including UTRWD's Doe Branch Water Reclamation Plant (WRP).
70. The Doe Branch WRP is designed and ready to be constructed when demand arises.
71. Mustang has subscription contracts with UTRWD for treatment capacity at the Doe Branch WRP and may add treatment capacity to meet increased demand. The first phase of Doe Branch WRP has 200,000 to 300,000 gallons per day (gpd) of unallocated treatment capacity.
72. Mustang also has a subscription contract with UTRWD for treatment capacity at UTRWD's Riverbend WRP with the option to subscribe for additional capacity. The River Bend WRP has approximately 500,000 gpd of unallocated permitted capacity.

73. Mustang could provide wastewater service to the Proposed Service Area prior to completion of the Doe Branch WRP via a lift station on the Doe Branch WRP that will pump wastewater to the Riverbend WRP.
74. The Riverbend Water Reclamation Plant is permitted for 3.0 mgd with an option to expand to 7.0 mgd. The Doe Branch Water Reclamation Plant, permitted for 5.225 mgd, will eventually replace the Doe Branch Lift Station.
75. The Doe Branch Interceptor connects to the Doe Branch Lift Station.
76. The Doe Branch Interceptor runs at the edge of the Proposed Service Area and is sized to handle projected sewage flows for the Doe Branch Basin over the next 20 years.

Applicant's Ability and Capability of Providing Adequate Service

77. Mustang currently provides sewer service within one mile of the Proposed Service Area.
78. Mustang has an interceptor take point within one-half mile of the Proposed Service Area that will extend to the Doe Branch WRP.
79. Land Advisors is in the process of surveying, and when necessary acquiring, perpetual easements to extend a sewer trunk line from Mustang's wastewater take point, the Doe Branch Interceptor. The take point is located just south of the Tomlin Investments development on the south side of U.S. 380, just west of FM 1385.
80. With easements in place, Mustang can extend a sewer trunk line from the Doe Branch Interceptor northward along Doe Creek through the three Land Advisors developments and to the Contested Service Area.
81. Mustang has the ability to extend its wastewater collection system to the Proposed Service Area.
82. Mustang employs full-time operators who are licensed for sewer.

- 83. Mustang out-sources its engineering to HDR, Inc.
- 84. Certificating Mustang to serve the Proposed Service Area will complete the Doe Branch watershed and accommodates the natural drainage pattern from the Proposed Service Area to the Doe Branch WRP.
- 85. Mustang possesses the requisite managerial and technical capabilities to provide sewer service.
- 86. Mustang is capable of providing wastewater service that conforms to the applicable regulatory requirements.

Financial stability and capability

- 87. Mustang possesses the requisite financial stability to provide sewer service.
- 88. Mustang has the financial resources to serve the Proposed Service Area when service is requested.
- 89. For the fiscal year ending September 30, 2007, Mustang SUD had total net assets, or equity, in the amount of \$23.2 million, including \$5.4 million in cash or cash equivalents and \$2.6 million in restricted assets.
- 90. Mustang has a debt-to-equity ratio of 0.34:1.

Feasibility of Obtaining Service from an Adjacent Utility

- 91. Aqua Texas is certificated to provide sewer service to the 128-acre Prosper Point Development.
- 92. Aqua Texas has an agreement with Prosper Point Development to serve 578 sewer connections.
- 93. No development has occurred on the 128-acre tract and Aqua Texas has not yet constructed a package waste water treatment plant.

94. The discharge permit for the planned Aqua Texas plant has a maximum allowed capacity of 0.225 mgd and is sized to meet the only the demands of the Prosper Point Development.
95. As currently permitted, the Aqua Texas plant could not serve dense development in the 1,400-acre Contested Service Area; it could only serve a density of one unit per two acres.
96. Aqua Texas has no guaranteed wastewater treatment capacity from UTRWD, or any other entity, with which it can serve the Contested Service Area.
97. The City of Celina supports Mustang's amended Application.

Impact on Environmental Integrity

98. There will be some temporary disturbance of the environment due to construction.
99. A central sewer system will be more environmentally compatible than OSSFs to the development that is occurring in the Proposed Service Area.
100. A central sewer system will allow denser development than an OSSF and will allow types of development that would not be feasible with an OSSF.
101. Certifying the Contested Service Area to Mustang will minimize the impact on the environment by allowing proper planning within the drainage basin.
102. Proper planning includes using gravity flow when possible to avoid the need for lift stations and allowing the installation of lines that will accommodate later growth.
103. Proper planning will avoid the replacement of undersized lines.
104. Proper planning will assist in locating needed utility corridors in the correct locations.

105. Installing trunk lines and facilities in a single easement acquired from Land Advisors eliminates the need for the subsequent acquisition of parallel easements and construction of parallel lines and facilities.
106. By certificating the entirety of the Proposed Service Area at this time, Mustang can require developers to enter into pro-rata agreements to fund construction of the oversized facilities.
107. Allowing proper planning can reduce the need for mechanical systems, such as lift stations, and help protect the environment from mechanical upsets.
108. Installing lines to accommodate anticipated growth avoids the unnecessary disturbance of soils at a subsequent date.
109. The benefits of the new wastewater system outweigh the temporary disturbance of the environment.
110. Approving the Application will have no significant detrimental effect upon environmental integrity.
111. Approving the Application should improve the environment in the Proposed Service Area compared to more piecemeal planning.

Improvement in Service or Lowering of Consumer Costs

112. Because Aqua Texas has not filed an application to serve the Contested Service Area with sewer service, it is not possible to directly compare the rates of Aqua Texas and Mustang.
113. In the general geographic area, Mustang's sewer rates are lower than Aqua's sewer rates.
114. Property owners in the Proposed Service Area who desire higher density development or a type of use not readily served by an OSSF will benefit from sanitary sewer service.

- 115. Current users of an OSSF will not be required to connect to the sanitary sewer.
- 116. By requiring developers to enter into pro-rata agreements to fund construction of the oversized facilities, the unnecessary cost of replacing undersized lines can be avoided.

Regionalization

- 117. Mustang's Application extends the existing regional system to the Proposed Service Area.
- 118. Mustang's Application complies with the goal of developing and using regional facilities.

CONCLUSIONS OF LAW

- 1. The Commission has jurisdiction over this case under chapter 13 of the Texas Water Code.
- 2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to chapter 2003 of the Texas Government Code.
- 3. Proper notice of the Application and hearings was given as required by the Texas Water Code, the Texas Government Code, and the Commission's rules.
- 4. The Commission may grant a CCN amendment application if it finds that doing so is necessary for the service, accommodation, convenience, or safety of the public. TEX. WATER CODE § 13 .246(b), 30 TEX. ADMIN. CODE (TAC) § 291.102(c).
- 5. In determining whether to amend a CCN, the Commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service. 30 TAC § 291.102(a).
- 6. For sewer utility service, the Commission shall ensure that the applicant is capable of meeting the TCEQ rules and the requirements of the Texas Water Code. 30 TAC § 291.102(a)(2).

7. The Commission shall consider the factors listed in TEX. WATER CODE § 13.246(c) and 30 TAC § 291.102(d) when considering whether to amend a CCN.
8. The Commission adopts the parties' stipulations of fact.
9. Mustang has met its burden of proof on the applicable criteria with respect to the Uncontested Service Area.
10. The CCN amendment is necessary for the service, accommodation, convenience, or safety of the public in the Uncontested Service Area.
11. Mustang has met its burden of proof regarding the applicable requirements for the Contested Service Area.
12. The CCN amendment is necessary for the service, accommodation, convenience, or safety of the public in the Contested Service Area.
13. Mustang's application for a CCN amendment should be granted for the entirety of the Proposed Service Area.
14. Certifying Mustang to serve the Proposed Service Area is consistent with the objectives of regionalization.
15. Based on the above Findings of Fact and Conclusions of Law, Mustang's amended Application for a sewer CCN to serve the Proposed Service Area, including the Contested Service Area, should be approved.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Application of Mustang SUD to amend sewer CCN No. 20930 in Denton County, Texas, to provide sewer service within its Proposed Service Area is GRANTED.

2. Mustang SUD shall provide the ED with the CCN boundary mapping information as required by 30 TAC § 291.105(a)(2) for the CCN area granted in this order.
3. The Executive Director of the Texas Commission on Environmental Quality shall amend the official CCN maps for Denton County and issue an amended CCN No. 20390 to the Applicant to reflect this decision.
3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties.
4. If any provisions, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission